

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:

CITY OF CHICAGO, ILLINOIS,

Petitioner,

CSX TRANSPORTATION, INC.,

Respondent.

No. T07-0096

Petition for funding from

the grade crossing

protection fund to make

vertical clearance

improvements underneath

the elevated viaduct

containing tracks of CSX

Transportation, Inc.

through the reconstruction

of 35th Street, a roadway

in the City of Chicago,

County of Cook and State

of Illinois and to

establish the terms and

conditions of the project

between the City of

Chicago and CSX

Transportation, Inc.

Chicago, Illinois

January 8, 2013

Met, pursuant to adjournment, at 1:34 p.m.,
in Conference Room S-801, 160 North LaSalle Street,
Chicago, Illinois.

BEFORE:

Ms. Latrice Kirkland-Montague,

Administrative Law Judge

1 APPEARANCES:

2
3 MR. JACK PACE,
4 (30 North LaSalle Street, Suite 1400,
5 Chicago, Illinois 60602,
6 (312) 744-6997),
7 jpace@cityofchicago.org,
8 for the Petitioner, City of Chicago;
9 FEDOTA CHILDERS P.C.,
10 (Three First National Plaza,
11 70 West Madison Street, Suite 3900,
12 Chicago, Illinois 60602,
13 (312) 236-5015), by:
14 MR. PAUL D. STREICHER,
15 streicher@fedotachilders.com,
16 for the Respondent, CSX Transportation, Inc.;

17
18 ILLINOIS COMMERCE COMMISSION
19 (527 East Capitol Avenue,
20 Springfield, Illinois 62701,
21 (312) 636-7760,
22 MR. BRIAN VERCRUYSSSE,
bvercruy@icc.illinois.gov,
for the Staff;

23
24 IDOT,
25 (100 West Randolph Street, 6th Floor,
26 Chicago, Illinois 60601,
27 (312) 793-2965), by:
28 MR. LAWRENCE PARRISH,
29 lawrence.parrish@illinois.gov,
30 for the Illinois Department of Transportation.

31 Also Present:

32 Mr. Joe Alonzo,

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I N D E X

WITNESS	DX	CX	RDX	RCX	By Judge
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None.

E X H I B I T S

NUMBER	MARKED FOR ID	IN EVIDENCE
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None.

1 JUDGE KIRKLAND-MONTAQUE: By the power vested
2 in me by the State of Illinois and the Illinois
3 Commerce Commission, I now call Docket No. T07-0096
4 for hearing. This is -- this is in the matter of the
5 City of Chicago, petitioner, versus CSX
6 Transportation, Inc., and we are here on a petition
7 for funding from the grade crossing protection fund
8 to make vertical clearance improvements underneath
9 the elevated viaduct containing the tracks of CSX
10 Transportation through the reconstruction of 35th
11 Street in Chicago, Illinois.

12 May I have appearances, please. Let's
13 start with the City of Chicago.

14 MR. PACE: Thank you, your Honor. My name is
15 Jack Pace, Senior Counsel, City of Chicago, 30 North
16 LaSalle Street, Suite 1400, Chicago, Illinois, 60602.
17 And with me today is Joe Alonzo. He's with the
18 Chicago Department of Transportation.

19 JUDGE KIRKLAND-MONTAQUE: Okay. All right.
20 CSX?

21 MR. STREICHER: Good morning, your Honor. My
22 name is Paul Streicher, S-t-r-e-i-c-h-e-r. My office

1 address is 70 West Madison Street, Suite 3900, in
2 Chicago 60602. Area code (312) 236-5015. I
3 represent CSX Transportation, Inc.

4 JUDGE KIRKLAND-MONTAQUE: Okay. Staff?

5 MR. VERCRUYSSSE: Thank you, your Honor. Brian
6 Vercruysse, V-e-r-c-r-u-y-s-s-e, representing the
7 Commerce Commission Staff in the real estate D
8 section, phone number (312) 636-7760.

9 JUDGE KIRKLAND-MONTAQUE: Okay.

10 And I think we have an IDOT
11 representative?

12 MR. PARRISH: Yes. Lawrence Parrish, Assistant
13 Chief Counsel, Illinois Department of Transportation,
14 100 West Randolph, 6th Floor, Chicago, 60601.

15 JUDGE KIRKLAND-MONTAQUE: Okay.

16 And we are here today at the request
17 of staff to hold a hearing to, I guess, discuss the
18 status of this project. So why don't I give the
19 floor to Mr. Vercruysse and have him give us a
20 status.

21 MR. VERCRUYSSSE: Thank you, your Honor. On
22 August 7 of 2012, staff filed a request for a hearing

1 based upon a number of factors. First, the project
2 that was part of the petition filed by the City of
3 Chicago included the lowering of the pavement on 35th
4 Street under the viaduct of the CSX Railroad. That
5 project was to be completed per the commission's
6 initial November 13, 2008, order within 24 months, so
7 it was supposed to be completed in late November of
8 2010. Soon after that order was entered, we had
9 received an indication from the CSX that as part of
10 the CREATE program -- that's the Chicago Region
11 Environmental and Transportation Efficiency
12 program -- it's a multi-agency, multi-private
13 business partnership to ease congestion with rail and
14 roadway networks -- that as part of one of their
15 projects, they were actually looking to reconstruct
16 the 35th Street bridge, so it was in direct
17 competition with the project that the City of Chicago
18 had proposed. So we posed the question to the CSX
19 and then ultimately Norfolk Southern or NS Railway,
20 with the reconstruction of the bridge, can we attain
21 our goal of improving the vertical clearance under
22 the structure? So there was variation coordination

1 meetings from the time of the November, 2008, order.
2 Through the next two, three years, staff would attend
3 CREATE meetings. We'd check in with the City of
4 Chicago to see where things were progressing. And we
5 received initial comments that it did appear that it
6 would be feasible to reconstruct the bridge with
7 improved vertical clearance, but it might be tied to
8 other work in an adjacent crossing and structure. We
9 haven't received a cost estimate or anything of the
10 sort yet. So, really, today what staff -- what I had
11 hoped to see is that we can come to terms with, one,
12 where we stand procedurally with the current Docket
13 T07-0096, the completion date that was assigned, what
14 we need to do in relation to what might happen with
15 the CREATE project, and hopefully for Mr. Streicher
16 and his client to see if they've made any progress on
17 the bridge reconstruction plans and if there's been
18 any funding that has been identified. That was the
19 other item that was noted in the staff response, that
20 there was potential funding with the latest federal
21 transportation bill. And that was noted as number
22 five in staff's request for hearing on page two of

1 August 7, that we understood that there was now
2 funding for this WA2 project -- that's the Western
3 Avenue Corridor CREATE Project 2 for that segment.
4 So there's a number of items to see or check on, and
5 I guess it's open for discussion with Mr. Streicher
6 and Mr. Pace on any available funding, further
7 coordination, and then I guess we'll look to the
8 parties and to you to see what you'd prefer
9 procedurally moving forward given the open docket and
10 the past completion date.

11 JUDGE KIRKLAND-MONTAQUE: Okay.

12 Well, I guess that's a good place to
13 start, Mr. Pace, about the completion date. I mean,
14 where do things stand with the project?

15 MR. PACE: Well, your Honor, obviously, the
16 city had the understanding that conversations with
17 staff and the railroads that started soon after the
18 order was entered regarding this CREATE project would
19 hopefully bear fruit and replace the original project
20 that was granted by the commission. And I guess I
21 have to acknowledge that we were remiss in not filing
22 something with the commission once, you know, a

1 certain amount of time took place and the CREATE
2 project wasn't firmly in place due to, I guess,
3 funding, primarily certainty, lack of funding
4 certainty. You know, the city is certainly -- now
5 that it sounds like this has a very good chance of
6 moving forward at this time -- you know, would ask
7 the commission if we can, you know, retain the
8 funding that was originally granted in the order and
9 use that funding, in part, to help fund the CREATE
10 project. We would, you know, respectfully request
11 that that funding not be taken back and put back into
12 the grade crossing protection fund. So at this
13 point, certainly the city stands ready, willing, and
14 able to help staff and the railroads coordinate and
15 have this money made available for this project and
16 do what we can do to support the project in terms of
17 obviously roadway preparation and so forth, in terms
18 of traffic and so forth, and other obviously
19 associated measures that would need to be done for
20 this project to take place.

21 I'd also want to mention, as I
22 introduce Joe Alonzo with the Chicago Department of

1 Transportation, if he had anything else to add in
2 terms of how we could support this new project.

3 MR. ALONZO: I think you give a good briefing
4 on what the status is. My understanding is that
5 there was a tacit agreement between the railroad and
6 the City of Chicago to actually have the railroads,
7 once they reconstruct that bridge, to elevate their
8 structure more or less by a foot. It's not
9 determined yet until they do their engineering. And
10 they have already had preliminary discussions, CSX
11 and Norfolk Southern, in designing the reconstruction
12 of that bridge. And like Mr. Vercruysse stated,
13 because of the fact that there's federal funding
14 identified and obligated to fund this portion of the
15 project, they can now begin discussing the design of
16 this reconstruction of the bridge whereby now we can
17 utilize the grade crossing protection fund moneys to
18 fund the cost differential of what it would be to
19 lift that bridge an extra foot in lieu of the
20 vertical clearance project.

21 JUDGE KIRKLAND-MONTAQUE: Okay.

22 So I guess that takes us to Mr.

1 Streicher in terms of what the railroad is planning
2 on doing right now.

3 MR. STREICHER: Let the record reflect I'm
4 smiling. I wish they would tell me. There are a
5 number of issues, Judge. First of all, from a
6 housekeeping standpoint, I think we need to get
7 Norfolk Southern added in this case and added as a
8 party. It turns out that Norfolk Southern also has
9 tracks on this bridge.

10 JUDGE KIRKLAND-MONTAQUE: Okay.

11 MR. STREICHER: Secondly, I am not aware,
12 through my client, of the status of funding. So I
13 can only rely on what the others have said to me
14 today, although my belief is that it is probably
15 correct. Mr. Vercruysse made a comment in the
16 beginning that although addressing the vertical
17 clearance issue is feasible, there is another issue
18 that is not either ripe or been resolved and that
19 this crossing may be tied to another structure also
20 on the Western Avenue corridor. And I know that in
21 the past there have been discussions between CSX and
22 the City of Chicago. I'm not aware of the present

1 status of those issues.

2 The last thing I do know is that
3 although I am hazy on some of the earlier issues, my
4 client has told me that for a timetable -- that they
5 are looking in terms of plans now but with a
6 construction timetable, maybe, in 2014. So that is
7 not written in stone yet. But on a preliminary
8 basis, that seems to be where the CREATE project side
9 of it is moving, and I should have additional
10 information on that as I get more involved in the
11 CREATE side of it. We would certainly welcome the
12 use of the GCPF moneys that have been obligated here
13 and would join in the request at this time that the
14 moneys not be de-obligated pending further order of
15 court.

16 JUDGE KIRKLAND-MONTAQUE: Actually, that was my
17 next question. It seems that this would have been up
18 for de-obligation given the dates.

19 MR. VERCRUYSSSE: Your Honor, the usual
20 timeframe, as you well know, is usually 12 months
21 after the completion date of the order. And whether
22 I believe I may have unintentionally left out that

1 language in the last order, the order did not have a
2 de-obligation date or sunset date identified. In
3 terms of a program stance, I did have the program
4 managers contacting me at different times asking if I
5 did concur with the de-obligation, and each time I
6 stated no based upon the pending project with CREATE.

7 JUDGE KIRKLAND-MONTAQUE: Okay.

8 MR. VERCRUYSSSE: So that was kind of where we
9 were at. But with this potential for the federal
10 funding -- and as Mr. Streicher has noted. With
11 working towards the completion of plans and possibly
12 a 2014 construction date -- that was the impetus to
13 move forward with staff's request and to put more of
14 a formal proceeding to how this is to take place so
15 that we have coordination at regular intervals and
16 that we have updates with what is taking place with
17 the CREATE project.

18 JUDGE KIRKLAND-MONTAQUE: Okay.

19 MR. VERCRUYSSSE: And as noted with the
20 different parties, the use of the grade crossing
21 protection funds as a shift over to the grade
22 crossing -- or I'm sorry, the bridge reconstruction

1 is acceptable to staff. We just would like to see,
2 as the plans develop, how the cost estimates work out
3 so --

4 JUDGE KIRKLAND-MONTAQUE: Ah-huh.

5 So, I guess, which is the question he
6 raises, where does that lead us in terms of how do we
7 combine the future prospect with what's currently on
8 record? Perhaps, a supplemental petition leaving
9 open the new development plans. I don't know. I'm
10 just brainstorming.

11 MR. VERCRUYSSSE: Right.

12 MR. STREICHER: Can we go off the record a
13 moment, Judge?

14 JUDGE KIRKLAND-MONTAQUE: Sure. Let's go off
15 the record.

16
17 (There was a discussion off
18 the record.)

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20 JUDGE KIRKLAND-MONTAQUE: Back on.

21 MR. VERCRUYSSSE: Thank you, your Honor. Staff
22 would like to make a motion to add Norfolk Southern

1 Railway, NS Railway, as a respondent to this matter.

2 JUDGE KIRKLAND-MONTAQUE: Okay.

3 Any objection?

4 MR. PACE: No objection, your Honor.

5 JUDGE KIRKLAND-MONTAQUE: Okay.

6 Norfolk Southern will be added as a
7 party to this proceeding and notice will go out to
8 them regarding the next hearing date, which we have
9 established as Thursday, March 14, 2013, at 10:00
10 a.m. here in Chicago, so we will reconvene at that
11 time.

12 MR. VERCRUYSSSE: Thank you, your Honor.

13 MR. PACE: Thank you, your Honor.

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15 (WHEREUPON, the proceedings have
16 been adjourned until, March 14,
17 2013, at the hour of 10:00 a.m.)

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